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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/844,731	04/27/2001	Steven John Romme	659/789	1837

757            7590            04/01/2003  
BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, IL 60611

[REDACTED] EXAMINER

BRYANT, DAVID P

[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

3726

14

DATE MAILED: 04/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/844,731	ROMME ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	David P. Bryant	3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 December 2002.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 50-69 is/are pending in the application.
- 4a) Of the above claim(s) 50-56 and 64-69 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 57,58 and 62 is/are rejected.
- 7) Claim(s) 59-61 and 63 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6,7,9,10.                    6) Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Species B (readable on claims 57-63) in Paper No. 13 is acknowledged. **Claims 50-56 and 64-69 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.**

### ***Specification***

The disclosure is objected to because of the following informalities:

#### **Page 2:**

In line 14, the omitted Serial Number or corresponding Patent Number should be provided.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 57, 58, and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonk (U.S. Patent No. 4,535,912) in view of Applicant's admitted prior art (AAPA).**

Bonk teaches a wet wipes dispenser **1** comprising an interior **10**, a tray **3** situated in the interior, and a removable wiper **2**. The interior is intended to house a container **4** of wipes **17**. See Figures 1 and 5. As disclosed in column 4 (lines 40-42) and column 5 (lines 12-30), the container **4** inherently provides a bacterial resistant seal in being formed from a vapor- and moisture-impervious plastic material which is heat-sealed around its periphery. In column 9 (lines 16-18), instructions are provided for refilling the dispenser with a container **4** of wipes, comprising removing the removable tray **3** from the dispenser and inserting the refill container into the interior.

Although Bonk teaches a dispenser having the structural features recited in the claims, and the steps for inserting a refill container of wipes into the dispenser, there is no explicit teaching of determining the dimensions of a first dispenser, and using the dimensions to manufacture a container of wipes which will fit into the interior of the first dispenser, and then inserting the manufactured container into a second dispenser.

AAPA is found on pages 9-10 of the specification, where it is disclosed that it is known for a competitor to obtain a wet wipes dispenser of an original manufacturer, analyze the dispenser by measuring the dimensions thereof, manufacture wipes refills based on the measurements, and sell the refills for prices at or below those charged by the original manufacturer of the dispenser.

It would have been obvious to one of ordinary skill in the art at the time the invention was made for a competitor to obtain a wet wipes dispenser of Bonk, measure the dimensions thereof, and manufacture a refill container of wipes which fits within the dispenser and which

may be replaced by following Bonk's instructions, as taught by AAPA, in an effort to profit from the often-required replacement of the consumable wipes product.

Further, if applicant contends that pages 9-10 of the specification do not constitute AAPA, it must be noted that the steps recited in the claims are well known in manufacturing; such a process is commonly referred to as "reverse-engineering." Since the claimed dispenser structure is known in the art, as evidenced by Bonk, the steps for "reverse-engineering" wipes refill containers 4 would be obvious and well within the level of ordinary skill in the art.

#### *Allowable Subject Matter*

**Claims 59-61 and 63 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.**

The following is a statement of reasons for the indication of allowable subject matter:

Although the steps recited in the objected-to claims constitute a well known process of reverse-engineering, the particular structures for the tray and the dispenser (wherein they include a cooperating pin and opening) and the wiper and the dispenser (wherein they include a cooperating post and opening) are not taught or suggested by the prior art of record.

#### *Contact Information*

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel. In as much as the official records and applications are located in the clerical section of the examining

Art Unit: 3726

groups, the clerical personnel can readily provide status information. M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, or fax (703) 872-9301 or by email to [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **David Bryant** whose telephone number is (703) 308-1859. Draft amendments or proposed changes to the application may be faxed directly to the examiner at any time via RightFAX at (703) 746-4213. The examiner can normally be reached on **Mondays- Thursdays from 6:30 AM to 5:00 PM.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 308-6789 or (888) 786-0101
Assignment Branch	(703) 308-9723
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Petitions/Special Programs	(703) 305-9285
Terminal Disclaimers	(703) 305-8408
PCT Help Desk	(703) 305-3257

If the information desired is not provided above, or a number has been changed, please call the general information help line below.

Information Help line                    1-800-786-9199  
Internet PTO-Home Page                <http://www.uspto.gov/>



David P. Bryant  
Primary Examiner  
Art Unit 3726